IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,
v.
ARNOLD LONNIE BRODSKY,
Appellant.

2 CA-CR 2006-0206
DEPARTMENT A

MEMORANDUM DECISION
Not for Publication
Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20052917

Honorable Howard Hantman, Judge

AFFIRMED

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Terry Goddard, Arizona Attorney General
By Randall M. Howe and Julie A. Done
Phoenix
Attorneys for Appellee

Robert J. Hooker, Pima County Public Defender
By Kristine Maish
Tucson
Attorneys for Appellant

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V Á S Q U E Z, Judge.

**¶1** A jury found appellant Arnold Lonnie Brodsky guilty of unlawfully possessing cocaine base and drug paraphernalia, and the trial court placed him on three years' supervised probation for the two felonies. On appeal, Brodsky contends the evidence at trial

was insufficient to sustain his convictions and that the trial court erred by denying his motion for judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P, 17 A.R.S. We affirm.

**¶2** Every conviction must be supported by "substantial evidence." Ariz. R. Crim. P. 20(a). "Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996); *see also State v. Terrazas*, 189 Ariz. 580, 586, 944 P.2d 1194, 1200 (1997). We view the evidence on appeal in the light most favorable to upholding the verdict, *State v. Miles*, 211 Ariz. 475, ¶ 23, 123 P.3d 669, 675 (App. 2005), and we resolve all reasonable inferences against the defendant. *State v. Carlisle*, 198 Ariz. 203, ¶ 11, 8 P.3d 391, 394 (App. 2000). "[O]nly if 'there is a complete absence of probative facts to support [the jury's] conclusion'" will we reverse a conviction for insufficient evidence. *Id.*, *quoting State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988); *see also State v. Alvarado*, 178 Ariz. 539, 541, 875 P.2d 198, 200 (App. 1994).

**¶3** The evidence supporting Brodsky's convictions in this case was substantial. It established that two uniformed police officers stopped the vehicle Brodsky was driving for a traffic violation. When Brodsky could not produce a driver's license, vehicle registration, or proof of insurance, one of the officers asked Brodsky if he had any other form of identification. He replied, "Let me check," and unzipped a small, blue, canvas bag that was beside him on the seat of the car. As Brodsky looked through the bag, the officer standing closest to him could see in the bag "what appeared to be a crack pipe" with residue on it. The officers asked Brodsky to step out of the car and placed him in handcuffs.

**¶4** After informing Brodsky of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966), one officer asked if he had weapons, narcotics, drug paraphernalia, or "anything like that" in the car or in the blue canvas bag. Brodsky replied that there might be crack cocaine in the bag but it was not his. A search of the bag produced some "small screws, bolts," and a screwdriver; more paraphernalia "consistent with crack cocaine usage"; and, folded inside a piece of stationery, pieces of what was later confirmed to be cocaine. Printed on the folded piece of stationery were the name and address of Brodsky's automobile mechanic business, "Lon's Hot Kitchen," and the handwritten notes "AC" and "heater cord."

**¶5** Brodsky testified that the car belonged to one of his customers, that the zippered bag was not his, that the folded piece of paper had come from one of "hundreds" of promotional notepads that were scattered around his shop for anyone to use, and that the notes jotted on the folded stationery were not his handwriting. But additional evidence supporting the jury's verdicts came from Brodsky's own words to the arresting officers. Not only had he first signaled his knowledge of the cocaine by telling one officer that "there may be crack in the bag" but, the officer testified, when he had told Brodsky what he had found and why Brodsky was being arrested, "[a]t that point [Brodsky] had called me by name and told me . . . basically, Come on, dude, can't we just throw that on the ground and stomp on it? Can't you just get rid of it? I don't need this right now."

**¶6** The crux of Brodsky's argument on appeal is that he had merely been present in a customer's vehicle in which cocaine and drug paraphernalia happened to have been

found. Brodsky contends the state did not prove he had either actual or constructive possession of the contraband. *See generally* A.R.S. § 13-105(31) (defining possession); *State v. Curtis*, 114 Ariz. 527, 528, 562 P.2d 407, 408 (App. 1977) (mere presence where drugs are found does not prove crime of possession, which requires either actual or constructive possession; one constructively possesses by exerting dominion and control over substance or item). Therefore, Brodsky argues, the trial court should have granted the motion for judgment of acquittal he urged pursuant to Rule 20, Ariz. R. Crim. P., at the close of the state's case and again at the close of all the evidence.

**¶7** But Brodsky's response, when the officer asked if he could produce any form of identification, of looking immediately in the canvas bag beside him on the seat of the car afforded reasonable evidence from which the jury could conclude Brodsky not only exercised dominion and control over, but actually possessed, the bag and its contents. Brodsky's further statement to the officer that there might be crack in the bag was additional evidence of his knowing possession. Whether Brodsky's denials were believable or not was for the jury to decide. *See State v. Williams*, 209 Ariz. 228, ¶ 6, 99 P.3d 43, 46 (App. 2004) ("Although the record contains some conflicting evidence, it was for the jury to weigh the evidence and determine the credibility of the witnesses."); *State v. Carlos*, 199 Ariz. 273, ¶ 26, 17 P.3d 118, 125 (App. 2001) (jury "required to weigh the evidence and determine witness credibility accordingly").

**¶8** Indeed, Brodsky's trial testimony differed from the officers' in a number of respects and included new explanations he had not offered at the time of his arrest. To the

extent that Brodsky's testimony conflicted with the officers', it was the jury's province to resolve those conflicts, and it obviously did so in favor of the state. The existence of conflicting evidence does not mean the evidence of guilt was insufficient. To the contrary, if reasonable minds could fairly differ on whether the evidence establishes a given fact, we will deem the evidence substantial. *State v. Davolt*, 207 Ariz. 191, ¶ 87, 84 P.3d 456, 477 (2004); *State v. Ramsey*, 211 Ariz. 529, ¶ 43, 124 P.3d 756, 769-70 (App. 2005).

**¶9** Viewing the evidence in the light most favorable to the verdict and resolving all competing inferences against Brodsky, *see Miles*, 211 Ariz. 475, ¶ 23, 123 P.3d at 675; *Carlisle*, 198 Ariz. 203, ¶ 11, 8 P.3d at 394, we find substantial evidence to support the convictions and thus no abuse of the trial court's discretion in denying Brodsky's motion for judgment of acquittal. *See Carlos*, 199 Ariz. 273, ¶ 7, 17 P.3d at 121 (denial of Rule 20 motion reviewed for abuse of discretion). We therefore affirm Brodsky's convictions and the probationary term imposed.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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JOSEPH W. HOWARD, Presiding Judge